

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE VIVEK AGARWAL

&

HON'BLE SHRI JUSTICE RAMKUMAR CHOUBEY

CRIMINAL APPEAL NO. 3732/2025

ATUL NIHALE

Versus

THE STATE OF MADHYA PRADESH

&

CRIMINAL REFERENCE CAPITAL NO. 2/2025

IN REFERENCE

Versus

ATUL NIHALE

Appearance:

*Shri Sanjay K. Agrawal, Senior Advocate assisted by Shri Mihir
Agrawal, Advocate – amicus curiae for the accused.*

Shri Nitin Gupta, Public Prosecutor for the State.

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Reserved on : 19.11.2025

Delivered on : 22.01.2026
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JUDGMENT***Per : Justice Ramkumar Choubey,***

Heard finally.

2. The appeal under Section 415 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity “BNSS”) filed by the accused against conviction and sentence and the reference for confirmation of death sentence under Section 407 of BNSS submitted by the Special Judge, Bhopal designated under the provisions of the Protection of Children from Sexual Offences Act, 2012 (commonly known as “POCSO Act”) are decided by this common judgment. Firstly, we will conclude the appeal filed by the accused.

3. The appellant-accused, vide judgment dated 10.03.2025 passed by the learned Special Judge in Special Case No.303/2024 (State of Madhya Pradesh v. Atul Nihale), stood convicted and sentenced, as depicted in the listicle chart below:-

Conviction		Sentence		
Section	Act	Imprisonment	Fine	Imprisonment in lieu of fine
87	BNS, 2023	R.I. for seven years	Rs.100/-	R.I. for three months
65(2) / 5(m)/6	BNS, 2023/POCSO	Life Imprisonment until natural life	Rs.100/-	R.I. for three months
64(2)(l) /5(j)(i)/6	BNS, 2023/POCSO	Death sentence	Rs.100/-	R.I. for three months
64(2)(m) /5(1)/6	BNS, 2023/POCSO	Life imprisonment until natural death	Rs.100/-	R.I. for three months
66 / 5(j)(iv)/6	BNS, 2023/POCSO	Death sentence	Rs.100/-	R.I. for three months
103	BNS	Death sentence	Rs.100/-	R.I. for three months
238(a)	BNS	R.I. for seven years	Rs.100/-	R.I. for three months

4. To unravel the exactitude of occurrence, it is expedient to enter into the facts of the case, which would surely navigate the path to dispense justice. Suffice it to say that the mother of deceased girl-child (PW2) made a complaint to the Station House Officer, Police Station Shahjahanabad, Bhopal, on 24.09.2024 to the effect that her daughter, aged about five years was missing. On the anvil of said complaint, Sub Inspector Anant Kumar Pandey (PW1) recorded a missing-person report at No.48/2024 (Ex.P/1) and against unknown person, an FIR bearing Crime No.525/204 was registered. During the course of investigation, statements of witnesses were recorded and a map showing area (Ex.P/3) was prepared. While search operation on 26.09.2024 around Multi-area, the police personnel noticed some unpleasant/disagreeable smell. In the pursuit of finding a probability, they reached to ransack Flat F-2 of Block No.A-1, Bajpai Nagar, Eidgah Hills, Bhopal where co-accused Basanti, mother of the appellant and Chanchal, sister of the appellant objected, but the police personnel forcibly entered the flat and on a thorough search, a white plastic tank kept in the bathroom was found containing a dead body of a girl-child. The corpse was identified by her father (PW5) and elder brother of father (PW6). Two panchnama (Ex.P/15 & P/16) and spot-map (Ex.P/17) were prepared and the corpse was sent for medical examination. A team of three doctors of Forensic Department of All India Institute of Medical Science (AIIMS), Bhopal has conducted the autopsy and opined the cause of death due to injuries in pelvis region, which were ante-mortem in nature and there was sexual assault and the death was homicidal in nature. Then, swab of vaginal smear and anus smear, clothes, nails, hair, etc. were seal-packed for DNA analysis and same were collected by the police vide seizure memo (E.P/62).

4.1 At later stage, a Special Investigation Team (SIT) was constituted and Assistant Commissioner of Police Ankita Khatarkar (PW7) was appointed as Investigating Officer. The appellant/accused was taken in to custody and on the basis of his disclosure vide memorandum (Ex.P/6) recorded under Section 23 of the Bhartiya Sakshya Adhiniyam, 2023, certain articles, viz. black-coloured T-shirt, Capri, white-shirt and a knife were recovered and seized vide seizure memo (Ex.P/7). The seized clothes were identified by mother of the deceased child and panchnama (Ex.P/8) was prepared.

4.2 The appellant/accused was medically examined vide medical report (Ex.P/47) by Dr. Rajendra Suthar (PW13) who procured semen slide, pubic hair, underwear and handed over to the concerned police personnel in seal-packed condition which were collected by the police vide seizure memo (Ex.P/63).

4.3 The seized articles were sent for forensic analysis and DNA test. Dr. Anil Kumar Singh (PW19), who after examination, gave a report (Ex.P/58), in which, it is opined that blood found on seized articles (A-34 and A/35) from the appellant/accused and of his blood sample, were of same profile and also opined that the mother and father of deceased child are her biological parents.

4.4 After completion of investigation a charge-sheet was filed in the Court of Special Judge, being exclusively triable by it.

4.5 At trial, the appellant/accused abjured his guilt and pleaded fallacious implication. On the fulcrum of material gleaned by the prosecution and the evidence adduced, the learned Special Judge vide judgment 10.03.2025, although acquitted the co-accused Basanti and Chanchal but convicted and sentenced the appellant/accused as mentioned herein above.

5. Learned counsel for the appellant/accused sanguinely propounded that the offence might have been committed by some unknown person and the appellant/accused has, without any foundation, been incriminated falsely inasmuch as the appellant was not the owner of the flat from where dead body of child was recovered. Raising clouds of doubt over the seizure memo (Ex.P/49), learned counsel submitted that there was every likelihood of its tampering. He asserted that in the absence of any incriminating material available on record against the appellant/accused, the learned trial court has convicted him on assumptions, based on uncorroborated evidence. On these premise, learned counsel for the appellant prayed that the appellant/accused deserves to be acquitted. Alternately, learned counsel implored that if the Court comes to a conclusion that there is availability of incriminating material against the appellant/accused, then the sentence of capital punishment may be reduced to some lesser imprisonment.

6. *Per contra*, learned counsel for the respondent/State submitted that by way of evidence adducing ample material, the prosecution has successfully proved its case beyond all reason doubt. He further submitted that demeanour of the appellant is not of an innocent as he saddled a criminal baggage and five other criminal cases are pending against him. He further submitted that acceding to the request of acquittal would tantamount to setting a hardcore criminal free to stray, which may again provoke him to commit offence alike. Ergo, succouring the judgment of conviction and order of sentence, learned counsel for the respondent/State prays for dismissal of the criminal appeal.

7. Heard the learned counsel for the parties at length and meticulously perused the record of the trial Court.

8. To bring home the charge, the prosecution has examined as many as 22 witnesses. The Mother of the deceased girl-child (PW2) in her deposition has stated that on 24.09.2024, when she returned home and inquired about her daughter from her mother-in-law, it was told that she had brought back the child from Anganwadi and now had gone to bring book. Thereafter, when the girl did not return, they started searching her and ultimately they made a complaint i.e. missing report (Ex.P/1) to the police. The Father (PW5) and Grandmother (PW15) of the deceased girl-child also stated in the same line as has been stated by mother (PW2). The Father of the deceased girl-child (PW5) stated that his daughter was aged five years at the time of incident and her date of birth is 05.09.2019 which is corroborated by the Birth Certificate (Ex.P/12).

9. In-charge Sub Inspector Anant Kumar Pandey (PW1) stated that he registered the missing-person report (Ex.P/1) and FIR (Ex.P/2) and after being searched out, the dead body of the deceased girl-child was found in a white water tank kept in Flat No.F-2, Block No.A-1, Bajpai Nagar, Eidgah Hills, Bhopal. Similar is the statement of Sub Inspector Yogita Jain (PW3) and she added that the parents of the deceased girl-child had identified the body of the deceased child.

10. Adverting to the cause of death and sexual assault over the deceased girl-child, it is imperative to go-through the medical and scientific evidence. The postmortem was conducted on 26.09.2024 by a team of doctors comprising of Dr. Arneet Arora (PW4), Dr. Divyabhushan and Dr. Rishab of the Forensic Department of All India Institute of Medical Science (AIIMS) Bhopal. Dr. Arneet Arora (PW4) explicitly stated that on being brought the corpse by Constable Nikita (4547), he along with Dr. Divyabhushan and Dr. Rishab conducted the

medical examination and autopsy. As per Dr. Arneet Arora (PW4), following injuries were found on the body of the deceased :-

- (i) Reddish contusion of size 3x2cm present over inner aspect of lower lip;
- (ii) reddish contusion of size 13x6cm present over ventral aspect of lower right arm and proximal right forearm;
- (iii) multiple reddish contusion of size varying from pinhead to 3x2cm, in an area of size 7x4cm present over ventral aspect of left forearm and wrist joint;
- (iv) reddish contusion of size 3x2cm present over lower back, 5cm above gluteal cleft in the midline;
- (v) intestinal loops protruding out from vaginal and anal opening. On further exploration, perineum lacerated, and communication between vaginal canal and anal canal evident, circular tract of diameter 2.5cm evident, opened directly from vagina into the abdominal cavity, margins contused and surrounding muscle and soft tissue ecchymosed. Urinary bladder and uterus lacerated;
- (vi) reddish-blue contusion of size 10x8cm present over left gluteal region, 6cm below posterior superior iliac spine;
- (vii) reddish-blue contusion of size 5.5x5cm present over postero-lateral aspect of right thigh. 7.5cm below posterior superior iliac spine;
- (viii) reddish-blue contusion of size 10x8cm present over medial aspect of right thigh. 12Cm above right knee.
- (ix) reddish-blue contusion of size 8x7cm present over medial aspect of left thigh. 15 cm above left knee; and
- (x) yellowish brown abrasion of size 6x5cm present over lateral aspect of left knee.

11. Further, Dr. Arneet Arora (PW4) stated that viscera has been preserved, sealed and handed over to police constable concerned for toxicological analysis along with preservative sample and sample of seal, and anal and vaginal swab with smears, total five clothing received in situ, along with the body, nails with adjacent loose skin of both upper limbs, left upper 1st molar and scalp hairs were also preserved, sealed and handed over to police constable concerned along with preservative sample and sample of seal for DNA analysis. He cleared that blood sample could not be obtained as the body was in moderate stage of decomposition.

12. Dr. Arneet Arora (PW4), one of the members of the team which conducted autopsy and recorded findings vide postmortem report (Ex.P/33) has categorically opined in the manner that the body was of a female child in moderate stage of decomposition. Pelvis injuries were evident, which are sufficient to cause death in ordinary course of nature. Manner of death is homicidal. Time since death is within 2-3 days from postmortem examination. The findings given in the postmortem report (Ex.P/33), well proved by Dr. Arneet Arora (PW4), are un-rebutted.

13. On the basis of aforesaid evidence, it is clear that there was a sexual assault in a barbarous manner over the deceased girl-child and she succumbed because of the injuries sustained on pelvis region which was undoubtedly homicidal in nature. It can be discerned that death occurred on 24.09.2024, two days prior to date of postmortem i.e. 26.09.2024.

14. Dead body of the deceased girl-child was recovered from Flat No.F-2, Block No.A-1, Bajpai Nagar, Eidgah Hills. So far as the connection of the appellant/accused with the flat from where the dead body was found is concerned, the learned trial Court has considered the

statement of independent witnesses i.e. Devilal Rathore (PW16) and Himmat Singh (PW11) and according to the statement of Devilal Rathore (PW16), he exchanged his flat with one Narmadi Bai, who is mother of Himmat Singh (PW11), who gave the said flat on rent to the mother of appellant/accused Basant Bai, in which, the appellant/accused also used to reside with his family. The factum of residing in the said flat has also been proved by Ashok Nagraj (PW21), who in his testimony has deposed that one day prior to the alleged incident i.e. on 23.09.2024, he had visited the said flat where the appellant/accused, in an inebriated state, was quarreling with his family members. He also stated that on 24.09.2024 the appellant did not come to work. It is noteworthy here that it is nowhere claimed by the appellant/accused that he was residing somewhere else nor has he stated about any alternative residence in his statement recorded in his general examination under Section 351 of BNSS.

15. At this juncture, this Court is inclined to screen the evidence of the witnesses so as to separate the wheat from the chaff for ascertaining whether it was the appellant/accused, who committed the murder of deceased girl-child after sexual assault. Sub Inspector Yogita Jain (PW3) in her evidence has stated that on 26.09.2024, after being searched out, the dead body of the deceased child was found in white water tank at Flat No.F-2, Block No.A-1, Bajpai Nagar, Eidgah Hills. She also stated that the parents of the deceased girl-child had identified the body of the deceased child. The Mother (PW2) and Father (PW5) of the deceased girl-child both have stated in the same line and corroborated the search operation and recovery of dead body of the deceased girl-child from Flat No.F-2, Block No.A-1, Bajpai Nagar,

Eidgah Hills and also that dead body of a girl-child was identified by them as body of their daughter aged five years.

16. The Father of deceased girl child (PW5), in his examination, has stated that they searched along with police personnel for his daughter for two-three days and on 26.09.2024, suspecting on the basis of putrid smell coming from a Flat No.F-2, Block No.A-1, Bajpai Nagar, Eidgah Hills, he along with police personnel knocked on the door of said flat, where co-accused Basanti and Chanchal tried to restrain them from entering into the house, anyhow when they entered the flat, found that smell was pervading from a tank kept in bathroom and on being searched by the police personnel, a dead body was found and this witness identified the dead body of his daughter. He proved the panchnama (Ex.P/15) and also proved the seizure of blood stained white-coloured murky pillow, shawl and coverlet from the spot vide seizure memo (Ex.P/35). Brother of father of deceased child (PW6) has corroborated the statement of Father (PW5) and Mother (PW2) of deceased girl-child, both proved search pachanama (Ex.P/15), identification panchnama (Ex.P/16) and spot-map (Ex.P/17).

17. Assistant Police Commissioner Ankita Khatarkar (PW7) has stated in her examination about recording of appellant/accused's memorandum (Ex.P/45) on 27.09.2024 under Section 23 of the Bhartiya Sakshya Adiniyam, 2023 in the presence of witnesses Seema and Santosh, but on the basis that memorandum (Ex.P/45), nothing substantial could be gathered from the appellant/accused and he was further interrogated and another memorandum (Ex.P/6) was recorded on 29.09.2024 in presence of the witnesses Mother (PW2) and Father (PW5).

18. Ankita Khatarkar (PW7) stated that the appellant/accused vide memorandum (Ex.P/6 & P/45) disclosed the manner in which he sexually assaulted and caused death of deceased girl-child; that on 24.09.2024, when the deceased girl-child was playing at 12.00 noon, he forcibly dragged her inside the room and on her crying he gagged a cloth in her mouth and after striping off her clothes and also of himself, he tried to enlarge her private part to ease penetration of penis by 2-3 time driving a kitchen knife in her vagina and then he inserted his penis, then she became unconscious and blood was oozing from her private part and he by his t-shirt wiped the spurting blood. He repeated the penetration 1-2 times, then she lost breathing and then after putting-up the clothes, he wrapped the body in a cloth and put it inside the tank kept in his bathroom.

19. Ankita Khatarkar (PW7) further stated that on the basis of memorandum (Ex.P/6) of appellant-accused, the articles viz. black-coloured T-Shirt, Child's Capri, a white-pink coloured shirt and one knife was seized from the place located by the appellant/accused in his house i.e. Flat F-2 of Block No.A-1, Bajpai Nagar, Eidgah Hills, Bhopal. The said articles were seized vide seizure memo (Ex.P/7) in presence of witnesses i.e. Mother (PW2) and Father (PW5) of the deceased girl-child. These two witnesses in their statement have also stated about the procedure of seizure memo and they have corroborated the evidence of Ankita Khatarkar (PW7). It is well-proved that on the basis of disclosure of appellant/accused vide memo (Ex.P/6) such articles were seized vide seizure memo (Ex.P/7). The evidence of Mother (PW2) and Father (PW5) of the deceased girl-child appears to be a trustworthy and no material discrepancy found in their statements. They have witnessed the entire investigation carried out by the police

right from the lodging missing-person report, search around multi-area, recovery of dead body of their daughter from the flat where appellant/accused was residing along with his mother and sister, seizure of articles from that flat, recording of memorandums of the appellant/accused and recovery of articles on the basis of disclosure of appellant/accused. Merely a fact that these witnesses being parents of the deceased girl-child are interested witnesses, they cannot be disbelieved. As the victims of their five-year-old daughter's brutal slaying, they have no motive or reason to provide false testimony that would implicate an innocent person while letting the true perpetrator to remain free.

20. The memorandum (Ex.P/6) of the appellant/accused recorded under Section 23 of the Bhartiya Sakshya Adiniyam, 2023 is relevant as it relates to the discovery of fact, that is, articles seized vide seizure memos (Ex.P/7). The Supreme Court in the case of **Mohmed Inayatullah v. The State of Maharashtra (1976) 1 SCC 828**, while considering a noted judgment of Privy Council in case of **Palukuri Kottaya v. Emperor, AIR 1947 PC 67** restated the legal proposition with regard to scope and object of the provisions of Section 27 of the Indian Evidence Act (analogous to Section 23 of the Bhartiya Sakshya Adiniyam, 2023) and it has been categorically held as under:-

“11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete cases is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and swift glance at the section and be reminded of its requirements. The section says:

“Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not,

as relates distinctly to the fact thereby discovered may be proved.”

12. The expression “provided that” together with the phrase “whether it amounts to a confession or not” show that the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last but the most important condition is that only “so much of the information” as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word “distinctly” means “directly”, “indubitably”, “strictly”, “unmistakably”. The word has been advisedly used to limit and define the scope of the provable information. The phrase “distinctly relates to the fact thereby discovered” is the linchpin of the provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

13. At one time it was held that the expression “fact discovered” in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact (*see Sukhan v. Crown [AIR 1929 Lah 344 : ILR 10 Lah 283 (FB)] ; Rex v. Ganee [AIR 1932 Bom 286 : ILR 56 Bom 172 : 33 Cri LJ 396]*). Now it is fairly settled that the expression “fact discovered” includes not only the physical object produced, but also the

place from which it is produced and the knowledge of the accused as to this (see *Palukuri Kotayya v. Emperor* [AIR 1947 PC 67 : 74 IA 65 : 48 Cri LJ 533] ; *Udai Bhan v. State of Uttar Pradesh* [AIR 1962 SC 1116 : 1962 Supp (2) SCR 830 : (1962) 2 Cri LJ 251]).”

21. Assistant Police Commissioner Ankita Khatarkar (PW7) stated that the appellant/accused was sent for medical examination vide Form (Ex.P/47) to J.P. Hospital, Bhopal. As per Dr. Rajendra Sudhar (PW13) and medical examination report (Ex.P/47), the appellant/accused was found competent to perform sexual intercourse. Dr. Rajendra Sudhar (PW13) while examination, preserved semen slide, pubic hair, underwear and blood sample and handed over the sealed box to the police personnel concerned. Dr. Rajendra Sudhar (PW13) also took blood sample of the appellant/accused for DNA test. Constable Deepak Pandey (PW18) has stated that after medical examination of the appellant/accused, he collected the sealed box containing articles and blood sample vide seizure memo (Ex.P/63) and this fact is corroborated by Mahendra Singh Jadon (PW10).

22. Lady Constable Nikita (PW14) in her examination has stated that on 28.09.2024, after the autopsy, she handed over the sealed articles given by the doctor to ASI Mahendra Singh Jadon (PW10), who has also proved seizure memo (Ex.P/62). Umesh Pal Singh Chouhan (PW9) has proved the seizure of articles and the recovery of the deceased girl-child's body from Flat F-2, Block A-1, Bajpai Nagar, Eidgah Hills, as documented in the seizure memo (Ex.P/35). This testimony is corroborated by Dr. Arneet Arora (PW4), who confirmed that these specific items were collected during the medical autopsy.

23. Ankita Khatarkar (PW7) stated that the articles collected from the dead body and appellant/accused and his blood sample were

sent for DNA test vide letter (Ex.P/49) along with decommissioning certificate (Ex.P/50) to the Joint Director, Regional Forensic Science Laboratory, Bhadbhada Road, Bhopal (in short- 'RFSL') and received an acknowledgment (Ex.P/51). Ankita Khatarkar (PW7) also stated that on 14.11.2024, the mother and father of deceased girl-child were sent for taking blood sample for matching their DNA with deceased to Gandhi Medical College, Bhopal, where Dr. Satish Maurya took the blood sample in her presence vide Identification Form (Ex.P/13 and P/36). Mother (PW2) and Father (PW5) of the deceased girl-child have also stated that their blood sample was taken. Further, Ankita Khatarkar (PW7) stated that the blood samples of mother and father of the deceased girl-child were sent vide letter (Ex.P/55) for DNA test to the RFSL and received an acknowledgment (Ex.P/56). The collection of articles, blood samples etc. and sending the same for DNA test in a proper manner is well evident from the record and no illegality or discrepancy is noticed in doing so on the part of the police.

24. The prosecution has submitted DNA test report dated 04.12.2024 (Ex.P/58) contained in 8 pages received from RFSL and same was admitted by the trial Court in evidence as per the provisions of Section 329 of BNSS and also examined the concerned analyst. Dr. Anil Kumar Singh (PW19), Assistant Chemical Analyst, RFSL in his examination, categorically stated about receiving of articles and samples vide letters (Ex.P/49 and P/55) in sealed-packed condition. He received the articles namely, 'A' stomach and its content and pieces of small intestine (viscera), 'B' vaginal swab and smear, 'C' vaginal swab and smear, 'D' nail along with adjustment skin, 'E' piece of liver, gallbladder, piece of each kidney and piece of spleen, 'F' teeth (left upper) first molar, 'G' scalp hair, 'H' a clothing towel, t-shirt, shirt, t-

shirt, saree, 'I' plastic container tank, 'J' semen slide, 'K' pubic hair, 'L' underwear, 'M' blood sample and takiya, 'O' shawl, 'P' chadar, 'Q' saree, 'R' t-shirt, 'S' capree, 'T' shirt, 'U' knife, 'V' solvent solution, 'W' blood sample, 'X' blood sample.

25. Dr. Anil Kumar Singh (PW19) has analyzed all the articles and samples through the prescribed method of DNA test about which he stated unequivocally. The opinion given by Dr. Anil Kumar Singh (PW19) is summarized in the following manner:-

- (i) The mother is biological parent of deceased child.
- (ii) The father is biological parent of deceased child.
- (iii) (Y) DNA profile of Clothing (towel) of deceased child (Art.H) are similar to the (Y) DNA profile of blood sample (Article-M) of the appellant/accused.
- (iv) The DNA profile of pillow (Art.-N) and Shawl (Art.-O) (recovered from spot) are similar to DNA profile of appellant/accused taken from his blood sample (Art. M).
- (v) Female DNA profile from Plastic Container Tank (Art.I), is similar to DNA profile of deceased child from stomach & its content & faeces of small intestine (viscera) (Art.A).
- (vi) DNA profile of deceased child's towel (Art.B) is similar to DNA profile of deceased child from stomach & its content & faeces of small intestine (viscera) (Art.A).
- (vii) DNA profile of deceased child's clothing (towel) (Art.H) is similar to DNA profile of accused's blood sample (Art. M).
- (viii) The DNA profile of pillow (Art.-N) and Shawl (Art.-O) (recovered from spot) are similar to DNA profile of deceased child's stomach & its content & faeces of small intestine (viscera) (Art.A).
- (ix) The DNA profile of pillow (Art.-N) and Shawl (Art.-O) (recovered from spot) are similar to DNA profile of accused's blood sample (Art.M).

26. It is evident from the statement of Dr. Anil Kumar Singh (PW19) and DNA test report (Ex.P/58) that (Y) DNA profile of Clothing (towel) of deceased child (Art.H) are similar to the (Y) DNA profile of blood sample (Article-M) of the appellant/accused. Similarly, The DNA profile of pillow (Art.-N) and Shawl (Art.-O) (recovered from spot) are similar to DNA profile of appellant/accused taken from his blood sample (Art. M). Likewise, The DNA profile of pillow (Art.-N) and Shawl (Art.-O) (recovered from spot) are similar to DNA profile of accused's blood sample (Art.M). Although from the vaginal swab and smear Ex.B(H/429) and vaginal swab and smear Ex.C(H/430) and nail along with adjacent skin Ex.D(H/431) of the deceased, Y-Chromosome STR DNA Profile could not be extracted, but this fact alone cannot wipe out all other conclusions of the DNA test report (Ex.P/58), which clearly establishes involvement of the appellant/accused.

27. One more aspect which needs to be dealt with and as was submitted on behalf of the appellant/accused about the mental state of the appellant/accused at the time of incident and throughout the trial. It is evident from the record that the learned trial Court has examined Dr. Rahul Sharma (CW-1) in this regard, who has categorically answered the questions put-forth on behalf of the appellant/accused and clarified it that during the examination, it appeared that appellant/accused was not in the state of bipolar mood disorder. However, he clarified that depression is normal when person is in incarceration and it may or may not be one state of bipolar mood disorder. In fact, it was not proved that the appellant/accused was suffering from any such mental disorder or illness that impaired his capacity to understand his actions. Furthermore, after evaluating the evidence, the trial court

correctly observed that the appellant/accused remained in a fit state of mind and was quite able to defend.

28. The facts as such; lodging of missing-person report, search around multi-area, recovery of dead body of the missing girl-child from a flat, flat belongs to the appellant/accused as occupant along with his mother and sister, seizure of certain blood stained articles from that flat thereafter, recording of memorandum of the appellant/accused and recovery of articles on the basis of disclosure of appellant/accused are proved by the direct evidence adduced on record.

29. So far as guilt of the appellant/accused is concerned, this part of the prosecution case founded on the circumstantial evidence. In other words, the evidence of second part of the prosecution story must demonstrate the completion of chain leading to the guilt of the appellant/accused and no one else. At this juncture, it is apropos to go-through the settled legal position. In a noted case of **Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622**, the Supreme Court codified the five principles known as “panchsheel”, for circumstantial evidence which has been reiterated in a catena of decisions and have followed by all the Courts as “golden principles”. It provided the legal foundation for the “complete chain” reasoning which is reproduced as under:-

- i. Circumstances must be fully established.*
- ii. The facts must be consistent only with guilt.*
- iii. Circumstances should be of a conclusive nature.*
- iv. They must exclude every possible hypothesis except guilt.*
- v. There must be a complete chain of evidence.*

30. In the present case, it is proved that the deceased girl-child was the daughter of Mother (PW2) and Father (PW5) and was missing from 24.09.2024, therefore, the parents have first tried to search in the locality and then lodged a missing-person report with the police. It is proved that the dead body of the missing girl-child found in a flat i.e. Flat F-2 of Block No.A-1, Bajpai Nagar, Eidgah Hills, Bhopal belongs to the appellant/accused as occupant along with his mother and sister. It is also proved that the dead body was put into a white-colored plastic tank kept in bathroom of that flat, from where the dead body and some blood stained clothes-articles were also seized. It is undoubtedly proved that the girl-child was subjected to sexual assault and she died due to injuries caused to her in pelvic region. The prosecution has successfully established that certain clothes-articles were seized on the basis of information given by the appellant/accused vide his memorandum. Further, it has been proved that all seized articles and blood samples of appellant/accused and parents of the deceased girl-child were analyzed for DNA test in the forensic laboratory i.e. RFSL. The DNA test results, as mentioned herein above, are conclusive so as to prove the involvement of the appellant/accused in the crime beyond any doubt. Additionally, the appellant/accused failed to provide a plausible explanation for the discovery of the deceased girl's body from inside the flat he occupied.

31. The evidence against the appellant extends far beyond a mere needle of suspicion, rather, a complete and unbroken chain of circumstances establishes with absolute certitude that the appellant alone is responsible for the sexual assault and death of the infant girl.

32. In view of the above discourse, this Court is of the opinion that the conviction of the appellant recorded by the learned trial Court

cannot be interfered with. Therefore, the conviction of the appellant/accused under Sections 87 of BNS, 65(2) of BNS r/w 5(m)/6 of POCSO Act, 64(2)(1) of BNS r/w 5(j)(i)/6 of POCSO Act, 64(2)(m) of BNS r/w 5(1)(6) of POCSO Act, 66 of BNS r/w 5(j)(iv)/6 of POCSO Act, 103 of BNS and 238(a) of BNS, recorded by the learned Special Judge is, hereby, affirmed. The appeal filed by the appellant/accused stand **dismissed**.

33. The sentence awarded to the appellant/accused shall be considered in the Reference submitted by the learned Special Judge.

In Reference:

34. The Special Judge has submitted a reference under the mandate of Section 407 of BNSS for confirmation of death sentence.

35. Learned counsel for the State submitted that looking to the nature of crime committed in barbarous manner, age of the deceased girl child, injuries caused by the accused and robust evidence available against him, the case falls under the rarest of rare category. Thus, he submitted that death sentence awarded by the learned Special Judge deserves to be maintained.

36. In contrast, learned counsel for the accused submitted that the accused belongs to a labour-class, he is a married person having wife and children and consequence of capital punishment will certainly ruin the life of his family members too. Pointing towards these circumstances, learned counsel submitted that they may be treated as mitigating circumstances in favour of the accused. Thus, he prayed for reversal of capital punishment into a lesser one.

37. The legal proposition is well settled with regard to the death penalty. An ancient principle of justice, known as *lex talionis*, that means that the punishment of a criminal should commensurate with the

crime does not find place in the modern penology. The fundamental concept of penology in India is reformatory. The existence of death penalty in penal provisions, thus, regulated by the legal proposition that capital punishment can only be awarded in the rarest of rare case and a sentence imposed shall not be violative of Article 21 of the Constitution of India.

38. The Supreme Court in case of **Bachan Singh v. State of Punjab, (1980) 2 SCC 684** categorically held that the extreme penalty can be inflicted only in gravest cases of extreme culpability; in making the choice of sentence, in addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also. In case of **Machhi Singh v. State of Punjab, (1983) 3 SCC 470**, the Supreme Court laid down that a balance-sheet of the aggravating and mitigating circumstances should be drawn up and the mitigating circumstances should be accorded full weightage and a just balance should be struck between the aggravating and mitigating circumstances. In the case of **Mukesh and another v. State (NCT of Delhi) and others, (2017) 6 SCC 1**, the Supreme Court while observing the doctrine of "rarest of rare", has given a verdict that the extreme brutality and calculated nature of the crime justified the death penalty. Over and above, the Supreme Court in the case of **Ramesh A. Naika v. Registrar General, High Court of Karnataka, Etc. 2025 SCC OnLine SC 575**, reproduced the list of cases wherein the death penalty was commuted to life sentence without remission for the remainder of the convict's life for the reasons recorded therein under the facts situation of those cases.

39. The circumstances under which an offence was committed and the circumstances of the convict under which he committed the offence, whether aggravating or mitigating, count the very facts thereof

and a fact situation, though may appear similar, will have diverse affects depending on case to case basis. Thus, this issue needs to be dealt with as per the fact situation of a given case tested on the settled legal proposition of “Rarest of Rare”.

40. This Court found that the appellant/accused has committed a heinous crime with a girl age of five years, who was unable to resist and after gagging her mouth, appellant/accused used a knife meant for culinary tasks, for enlarging the entrance of vagina, so as to penetrate. He caused as many as 10 injuries including penetration in the pelvic region, a very cause of death. Use of knife inside the vagina to enlarge it for easing penetration on an infant girl is a barbarous act of lusty mind. One can imagine the plight of deceased girl child when she was sexually penetrated and how in parts she would have breathed her last feeling the excruciating pain in the state of helplessness. Further, it is evident that after committing sexual assault, when the breathing of girl-child muted, the appellant/accused had put her dead body in a plastic tank and kept in bathroom for further 2-3 days awaiting a chance to dispose off the dead body elsewhere. This shows that a barbarity of act is dripping down from every ounce of evidence. Further, it is also noteworthy that the appellant/accused has criminal antecedents, inasmuch as he was previously convicted with the offence punishable under the Indian Penal Code and five other criminal cases were also registered against him.

41. After considering the aforesaid facts, the age of the appellant/accused, his marital status having wife and children and socio-economic background, it cannot be termed as mitigating circumstances. The facts of the case in hand, when examined from both, the offender's and the offence's point of view, it leads to a conclusion that this is a case which must fall in a rarest of rare category.

42. Before we conclude, we must observe that the sovereign objective of sentencing remains the assurance that crime meets its just desert, thereby satiating the cry for justice emanating from both the victim and the collective conscience of society. The courts must engage in a delicate balancing act, weighing the totality of circumstances. It is a mandatory judicial exercise to juxtapose aggravating factors against mitigating pleas to arrive at a sentence that is not merely legal, but fundamentally just.

43. In view of the above discourse, we find no reason to deviate from the well-reasoned findings given by the learned trial Court in imposing death penalty. Therefore, this Court, hereby confirms the death sentence awarded by the learned Special Judge to the appellant/accused.

44. Record of the trial court along with a copy of this judgment be sent back forthwith.

(VIVEK AGARWAL)
JUDGE

(RAMKUMAR CHOUBEY)
JUDGE